IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

Crl.Rev.Pet.No. 534 of 1998(R)

CC.326/1997 of JUDL.MAGISTRATE OF FIRST CLASS-II(FOREST OFFENCES),PUNALUR

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REVN. PETITIONER: (DEFACTO COMPLAINANT – PW1.)

NIRMALA DEVI, W/O.GOPI,
GOPI SADANAM, ELICODU,
ELAMBAL, VILAKUDY VILLAGE,
KOLLAM DISTRICT.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENTS: ACCUSED 1 TO 4 IN CC 326/97 JFMC-II PUNALUR
---------- ---- AND THE STATE

1. **PODICHY, W/O.KUNJURAMAN, PALAVILAYIL,**
   NEAR KALLADAMUKKU,
   KARAVALOOR VILLAGE, KOLLAM DISTRICT.

2. **PRABHA, D/O.PODICHY,**
   PALAVILAYIL VEEDU, NEAR KALLADAMUKKU,
   KARAVALOOR VILLAGE, KOLLAM DISTRICT.

3. **PREETHA, D/O.PODICHY, PALAVILAYIL VEEDU,**
   NEAR KALLADAMUKKU, KARAVALOOR VILLAGE,
   KOLL DISTRICT

4. **GEETHA, D/O.PODICY, PALAVILAYIL VEEDU,**
   NEAR KALLADAMUKKU, KARAVALOOR VILLAGE,
   KOLLAM DISTRICT.

5. **STATE OF KERALA, REP.BY PUBLIC PROSECUTOR,**
   HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.S.SUDHISH KUMAR
SRI.P.C.SIVARAJA PILLAI
PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.RP. NO.534/1998

ORDER ON CRL.MP. 2805/1998 IN CRL.RP. NO.534/1998

DISMISSED

4.07.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

Crl. R.P. No.534 of 1998

Dated 4th July, 2007

ORDER

This revision petition is filed by the de facto complainant in C.C.No.326/97 in the file of the JFCM-II, Punalur seeking to set aside the proceedings initiated against the de facto complainant under section 250 Cr.P.C. The trial court after considering the evidence adduced in the matter that consisted of the testimony of PWs 1 to 5 and Exts.P1 to P4, acquitted the accused. It is submitted that the case was charge sheeted by the police after due investigation on the basis of the complaint filed by the de facto complainant before the court which was forwarded for investigation under section 156(3) Cr.P.C. It is also submitted that with respect to the same matter, civil suit was filed by the de facto complainant as O.S.9/96 claiming damages and that the same was settled in the Lok Adalath. The counsel for the revision petitioner has produced copy

of the plaint and copy of the order of the Lok Adalath. Counsel has relied on the decision reported in **Balakrishnan Nambiar v. State of Kerala (1988 (2) KLT 518)** wherein the court has cautioned that it should not be forgotten that indiscriminate invocation of the powers under this section might often deter a timid person from approaching the portals of law courts, lest genuinely aggrieved persons disowned by witnesses would be exposed to the possibility of being mulcted with compensatory fine**.** The mere fact that the Magistrate is not inclined to believe the prosecution evidence is not sufficient to take action under this section.

2. In the instant matter, I find that PW-1, the de facto complainant and PWs 2 and 3 cited as occurrence witnesses have testified in support of the prosecution version. But the court on examination of the evidence was of opinion that the case set up has not been established. In the circumstances, and especially in view of the fact that the accused have been charge sheeted after investigation

by the police and also in view of the fact that in the civil suit filed, the matter has been compounded wherein the parties agreed to retain the disputed pathway without being obstructed by both sides, I find that section 250 Cr.P.C is not attracted. In the circumstances, the order of the court below issuing notice to the de facto complainant under section 250 Cr.P.C is set aside.

The Crl.R.P is allowed.

K.R.UDAYABHANU,
JUDGE.

Kvm/-

K.R.UDAYABHANU,J.

CRL.R.P. NO.534 OF 1998

ORDER

4-7-2007.